

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 00-6028-CR-DIMITROULEAS

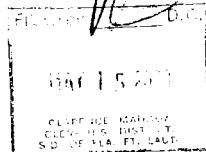
UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID G. TRACY,

Defendant.



PROPOSED VOIR DIRE QUESTIONS

The Defendant, DAVID G. TRACY, through undersigned counsel, respectfully requests the opportunity to ask the prospective jurors the following voir dire questions, or alternatively, that the Court put these questions to the prospective jurors in this case:

1. Do any of you think or assume that Mr. TRACY is guilty merely because he is before this Court as a Defendant in this case?

(a) Do all of you understand that an indictment is merely an accusation, and is not evidence of any sort?

2. Can and will you all accept and apply the principle that any defendant is presumed innocent unless and until the government proves him guilty beyond a reasonable doubt?

(a) If you were to vote on the defendant's guilt or innocence at this point, how would you vote?

3. In a criminal case, the Government has the burden of proving a Defendant's guilt beyond a reasonable doubt. Will each of you be able to decide this case in accordance with that standard?

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4. If the Court instructs you that the crimes charged include several elements, will you vote "NOT GUILTY" unless you are satisfied that the proof establishes all the elements beyond a reasonable doubt?

5. If after hearing all of the evidence, you feel that the defendant is possibly or even probably guilty, but you are not convinced beyond a reasonable doubt, would you hesitate to find him not guilty?

6. If, after hearing all of the evidence in this case, any of you have a reasonable doubt as to the defendant's guilt, would you hesitate-for any reason-to acquit him of these charges and return a verdict of not guilty?

7. Does any juror believe that under our system of justice, any defendant has the burden or duty of proving his innocence of the charges?

(a) Would you hold it against any defendant if he or she exercised his or her right not to testify? Would you perceive a decision not to testify as an admission of guilt?

(b) On the other hand, if a defendant does choose to testify in this case, would you be able to weigh his or her testimony just as you would the testimony of any other witness?

8. Do any of you have any close friends or relatives in the United States Attorney's Office, the Federal Bureau of Investigation, the U.S. Customs Service, the Drug Enforcement

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Administration, the Internal Revenue Service, or any other local, state or federal law enforcement agency?

(a) Have any of you ever been employed by any law enforcement agency?

-- If so, please give details as to position, the agency you worked for, and when you were so employed.

-- Would this experience in any way prevent you from judging this case fairly and based only on the evidence or lack of evidence?

9. Do any of you believe that the testimony of a witness should be given any greater weight or credibility just because he or she is a government employee?

10. Have any of you ever sat on a Civil Jury? If so, do you understand the difference in the burden of proof in a civil case and a criminal case ("preponderance of the evidence" as opposed to "beyond a reasonable doubt")?

11. Have any of you ever served on a Grand Jury? If so, do you understand the different functions of a Grand Jury and a Trial Jury--that is, that a Grand Jury, unlike a Trial Jury, is not governed by the standard of beyond a reasonable doubt?

(a) Are you aware that neither the defendant nor his attorney was present at the grand jury proceeding in this case, and that the only witness or witnesses who testified were those

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called by the prosecutor?

12. It is the duty of the attorneys for the government and for the defendants to object to evidence they deem to be improper or inadmissible. Will you be prejudiced against, or hold it against any party, if his or her attorney feels it is necessary to make numerous objections during the course of this trial?

13. The attorneys who happen to be representing the government are on an equal basis with the attorney representing the defendant. Would any of you give more merit, credence or confidence to what the government's attorney says merely because he or she is representing the government?

14. Would you base your decision in this case on the mere fact that one party may call more witnesses than another party?

15. It is my duty at the conclusion of the evidence to instruct you as to the rules of law that you must apply in reaching your verdict. Do each of you agree to follow those rules of law, whether you personally agree with them or not?

-- If, for example, I instruct you that one cannot be found guilty of tax evasion if he had an honest and good faith belief that he had no taxable income for the years in question, would you for any reason refuse to accept and apply that rule in reaching a decision in this case if the evidence supported it?

16. Would the fact that the U.S. government and the Internal

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Revenue Service are bringing these charges against Mr. TRACY, cause you to not be fair and objective towards him?

17. Do any of you believe that the provisions of the Internal Revenue Code are clear, simple, and not subject to differing interpretations?

18. Do each of you understand the difference between a criminal case such as this one, and a civil proceeding in which the government is attempting to collect money that it believes it is owed for unpaid taxes?

-- Do you understand that the only question you are here to decides is whether or not the government proves beyond a reasonable doubt each element of a particular criminal charge it has brought against Mr. TRACY?

19. Do any of you believe that a citizen does not have the right to challenge the I.R.S. when he sincerely believes they are wrong?

20. Do any of you believe that it should be a crime for someone to interpret the provisions of the tax code and regulations a certain way?

21. Have any of you seen or know of a case where a person who was charged with a crime was innocent?

22. Do any of you have any legal training or experience?

23. Do any of you have any accounting training or experience?

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24. Is there anything that hasn't been raised that might affect your ability to be an impartial juror in this case, and that you think we ought to know about in deciding whether you should sit as a juror?

25. Would any juror, having reached a determination on the basis of the evidence in this case, change his or her mind merely because most of the jurors have reached a different determination? Would any of you change your mind merely because you want to "get it over with" and go home?

26. Will you keep an open mind in this case and not come to any conclusion until you have heard all of the evidence and the Court has instructed you on the law that you are to apply?

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that true copies of the foregoing were hand-delivered in open court on May, 15, 2000 to A.U.S.A. Matthew Menchel.

Steven E. Kreisberg
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